

REMARKS

The present Amendment is in response to the Office Action mailed September 22, 2006, in the above-identified application. Enclosed herewith is a Petition requesting a three-month extension of time for resetting the deadline for responding to the Office Action from December 22, 2006, to and including March 22, 2007.

In the present Amendment, independent claim 13 has been amended to recite that the spring 130 (FIG. 4A and 4B) has "a top side with a curved convex surface that extends from the curvate volume and confronts the one of said plates [having the ball-shaped structure] and an underside with a curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates [to which the spring is affixed]." Support for this recitation is found in the specification and drawing FIGS. 4A-5. Thus, the amendment of independent claim 13 is fully supported by the originally filed specification and adds no new matter. Independent claims 16 and 21 have been amended in a similar fashion. Independent claims 13, 16 and 21 have also been amended to remove the recitation directed to the deflectable mesh. These limitations have been added to claims 14 and 24, which depend from independent claims 13 and 21, respectively.

Applicants acknowledge and appreciate the Examiner's indication that the Terminal Disclaimer has been recorded.

In the Office Action, the Examiner rejected claims 13-16, 18, 21 and 23-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,063,121 to Xavier et al. in view of U.S. Patent No. 3,867,728 to Stubstad et al. The Examiner asserts that Xavier discloses an intervertebral spacer device 10 including a first plate 20 and a second plate 48 coupled together by a ball-shaped structure 46 and a socket structure 68 having a central opening 74. The Examiner notes that the socket

structure 68 is attached to the second plate 48. The Examiner acknowledges that Xavier does not disclose that one of the first and second plate has an exterior surface with a deflectable/deformable surface provided thereon. The Examiner has cited Stubstad, however, as satisfying this deficiency.

In response to the Examiner's rejection, Applicants respectfully assert that claim 13 is unobvious over Xavier and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device having first and second plates with one of the plates having "a spring fixed thereto, said spring having a curvate volume for receiving and holding therein said ball-shaped structure, said spring having a top side with a curved convex surface that extends from the curvate volume and confronts the one of said plates and an underside with a curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates." Clearly, Xavier's socket supporting member 62 and socket 68 does not have "a top side with a curved convex surface that extends from the curvate volume and confronts the one of said plates" from which the ball 46 extends. In addition, Xavier's socket supporting member 62 and socket 68 does not have "an underside with a curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates" from which the socket supporting member extends. This structure is also not found in Xavier's cushion 80 or the combination of the socket supporting member 62, the socket 62 and the cushion 80. These deficiencies are not overcome by adding Stubstad to Xavier. For the above reasons, Applicants respectfully assert that independent claim 13 is unobvious over Xavier and Stubstad and is otherwise allowable. Claims 14 and 15 are unobvious, *inter alia*, by virtue of their dependence from claim 13.

Independent claim 16 is unobvious over Xavier and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including "a joint that couples said first and second plates together, said joint including a ball attached with one of said plates and a socket affixed with the other one of said plates for receiving and holding therein said ball, wherein said joint permits said first and second plates to move relative to one another, and wherein said socket has a top side with a curved convex surface that confronts the one of said plates and an underside with a curved concave surface that is spaced from and confronts the other one of said plates." Clearly, Xavier's socket supporting member 62 and socket 68 do not have "a top side with a curved convex surface that confronts" the plate from which the ball 46 extends. In addition, Xavier does not disclose that the supporting member 62 and socket 68 have "an underside with a curved concave surface that is spaced from and confronts" the plate from which the socket supporting member 62 extends. Xavier's cushion 80 also does not teach or suggest this claimed structure. These deficiencies are not overcome by adding Stubstad to Xavier. For these reasons, Applicants respectfully assert that independent claim 16 is unobvious over Xavier and Stubstad and is otherwise allowable. Claim 18 is unobvious by virtue of its dependence from claim 16.

Independent claim 21 is unobvious over Xavier and Stubstad for essentially the same reasons set forth above with respect to independent claims 13 and 16. Claims 23-26 are unobvious, *inter alia*, by virtue of their dependence from claim 21.

The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,989,291 to Ralph et al. in view of U.S. Patent 3,867,728 to Stubstad et al. In response, Applicants respectfully assert that claim 16 is

unobvious over Ralph and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including "a joint that couples said first and second plates together, said joint including a ball attached with one of said plates and a socket affixed with the other one of said plates for receiving and holding therein said ball." Referring to FIG. 9 thereof, Ralph's Bellville washer 230 is not "affixed with the other one of said plates for receiving and holding therein said ball" as required by claim 16. For these reasons, Applicants respectfully assert that claim 16 is unobvious over Ralph and Stubstad and is otherwise allowable.

The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,425,773 to Boyd et al. in view of U.S. Patent 3,867,728 to Stubstad et al. Referring to FIGS. 5 and 6 thereof, Boyd discloses a ball-shaped structure 146 that is received and held within a curvate volume of socket 126. Applicants respectfully assert that independent claim 16 is unobvious over Boyd and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including "a joint that couples said first and second plates together, said joint including a ball attached with one of said plates and a socket affixed with the other one of said plates . . . wherein said socket has a top side with a curved convex surface that confronts the one of said plates and an underside with a curved concave surface that is spaced from and confronts the other one of said plates." Clearly, Boyd's socket 126 does not have "an underside with a curved concave surface that is spaced from and confronts the other one of said plates." For these reasons, claim 16 is unobvious over Boyd and Stubstad and is otherwise allowable.

The Examiner rejected claims 13-16, 18, 20-21 and 23-26 under 35 U.S.C. §103(a) as being unpatentable over U.S.

Patent 5,893,889 to Harrington in view of U.S. Patent 3,867,728 to Stubstad et al.

In response to the rejection under Harrington, Applicants respectfully assert that independent claim 13 is unobvious over Harrington and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including a spring affixed to one of the plates, "said spring having . . . an underside with a curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates." Clearly, Harrington's annular collar 54 does not have "a curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates." For these reasons, independent claim 13 is unobvious over Harrington and Stubstad and is otherwise allowable. Claims 14 and 15 are unobvious, *inter alia*, by virtue of their dependence from claim 13.

Independent claim 16 is unobvious over Harrington and Stubstad for essentially the same reasons set forth above with respect to claim 13. Claims 18 and 20 are unobvious, *inter alia*, by virtue their dependence from claim 16.

Independent claim 21 is unobvious over Harrington and Stubstad for essentially the same reasons set forth above with respect to claim 13. Claims 23-36 are unobvious, *inter alia*, by virtue of their dependence from claim 21.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/648,464

Docket No.: SPINE 3.0-446 CIP III CONT

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 21, 2007

Respectfully submitted,

By Michael J. Doherty

Michael J. Doherty

Registration No.: 40,592

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

698533\_1.DOC